



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable C. F. Lookhart, Chairman  
Board of Insurance Commissioners  
Austin, Texas

Dear Sir:

Opinion No. O-4952

Re: Do the quoted provisions of the by-laws of a Texas fraternal society comply with the requirements of Article 4837, Chapter 6, Title 78, Revised Civil Statutes of Texas as to distribution of funds?

Your request for an opinion on the above matter has been received and carefully considered. I quote from your request as follows:

"In the Texas fraternal laws, Article 4837, Chapter 6, Title 78, Revised Civil Statutes, provides that 'Every provision of the laws of the society for payment by members of such society, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses. No part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses.'

"One of our licensed fraternal, operating under Chapter 6, Title 78, Revised Civil Statutes, provides in its Constitution and By-laws the following concerning its funds:

"Article XXIV. Section 1. The funds of the 'Fraternal Society' shall be as follows. Benefit Fund Class A, Mortuary and Reserve Fund B, Mortuary and Reserve Fund C, Mortuary and Reserve Fund D, Mortuary and Reserve Fund Juvenile, Expense Fund.

**"Composition of Funds**

"Section 2. Benefit Fund Class A shall consist of the balance of said fund as of December 31, 1927, and to said fund shall be credited all payments made by the insured of this Class. From this fund shall be paid all benefits accruing from time to time among the insured of this Class.

"Section 3. Be it further provided that the Board of Directors shall cause a valuation of the outstanding policies to be made as of December 31st of each year and in the event of a deficiency being shown the amount of such deficiency shall be proportionately charged against the policies of this Class as an indebtedness and be deducted in any settlement thereunder unless otherwise provided for by the Board of Directors. The valuation herein provided for shall be upon a basis not lower than the National Fraternal Congress Table 4 per cent. (On November 19, 1940 an Amendment passed which changed the method and basis of valuation.)

"Section 4. Mortuary and Reserve Fund B shall consist of the balance of the funds of all classes designated as follows: V, C, D, E, H, AA, R, T, and L, as of December 31, 1927, and to said fund shall be credited the income as herein provided and said fund shall be charged with all benefit payments made on account of the policies outstanding in these Classes.

"Section 5. Mortuary and Reserve Fund C shall consist of the balance of the funds of all classes designated as follows: M, I, and S, as of December 31, 1927, and to said fund shall be credited the income as herein provided and said funds shall be charged with all benefit payments made on account of the policies outstanding in these classes.

"Section 6. Mortuary and Reserve Fund B shall consist of the balance of the funds of all classes designated as follows: F, K and J, as of December 31, 1927, and all other classes of policies authorized by the Board of Directors unless otherwise herein provided and to said fund shall be credited the income as herein provided, and said fund shall be charged with all benefit payments made on account of the policies outstanding in these classes.

"Section 7. Mortuary and Reserve Fund Juvenile shall consist of all Classes of Juvenile policies now in force or which may later be authorized by the Board of Directors. To this fund shall be credited the income as herein provided, and said funds shall be charged with all benefit payments made on account of the policies outstanding in all Juvenile Classes.

"Section 8. The Expense Fund shall consist of the balance thereof as of December 31, 1927, and of all receipts for fees, sales of supplies, etc., and such other sums as may be available from income as herein provided. From this fund all expenses of the "Fraternal Society" shall be paid.

"Section 8a. The minimum reserve requirements on all inactive classes shall be the reserve calculated according to the one-year preliminary term method of valuation and upon the mortality table and interest assumption used in computing the rates and/or policy values (if any); and all active classes issued after December 31, 1934, shall be valued according to the American Experience Table of Mortality with interest at 4% per annum and provided further, that any paid-up inactive classes of Reserve Fund B, Section 4 above, may be valued as paid-up Life Expectancy according to said Mortality Table and interest assumption.

**"Disposition of Income**

"Section 9. From the Income of the "Fraternal Society", other than receipts for Class A, there shall be credited to the Mortuary and Reserve Fund B and to Mortuary and Reserve Fund D, and to the Mortuary and Reserve Fund Juvenile, such sum as may be sufficient to meet all claims arising thereunder and such further sums as may be necessary to meet the reserve requirements of the policies outstanding when valued on a basis not lower than that of the American Experience Table of Mortality with an interest assumption of 4 per cent, using a one year preliminary term method. Provided that Mortuary Fund D shall be valued on the National Fraternal Congress Table.

"The balance of Income to be credited to the Expense Fund, or a Surplus Fund as may be determined by the Board of Directors from time to time.

"The Board of Directors shall have full and original authority in the matter of rates of premium to be collected and the allotment thereof to the various funds of the "Fraternal Society".

"The above sections are the sole provisions regarding the authorization and composition of the funds and the disposition of the income of the particular society.

"We request your opinion as to whether or not the above quoted provisions comply with the requirements of Article 4837, Chapter 8, Title 78, Revised Civil Statutes of Texas, 1925."

It is the opinion of this department that the quoted provisions of the by-laws of a Texas Fraternal Society do not comply with requirements of Article 4837, Chapter 8, Title 78, Revised Civil Statutes of Texas, 1925.

Honorable O. B. Lockhart, Chairman, Page 5

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By  *Jas. W. Bassett*  
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Assistant

JWB:np

APPROVED NOV 12 1945  
*Gerald C. Mann*

ATTORNEY GENERAL OF TEXAS

